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**FISCAL IMPACT STATEMENT**

**LS 6707**

**BILL NUMBER: SB 561**

**NOTE PREPARED:** Jan 16, 2011

**BILL AMENDED:**

**SUBJECT:** Corrections and Sentencing.

**FIRST AUTHOR:** Sen. Steele

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** X **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Incentive and Disincentive Program for Class D Felony Offenders* – It requires the Department of Correction (DOC) to: (1) determine the average daily marginal cost of incarcerating an offender; (2) determine the average length of stay for a Class D felony offender in DOC; and (3) administer an incentive and disincentive program for counties to reduce the number of Class D felony offenders committed to DOC.
- B. *Judicial Conference* – It requires the Judicial Conference to adopt rules concerning swift and certain sanctions that a probation officer may use in supervising persons on probation. It requires the board of directors of the Judicial Conference of Indiana to adopt rules to establish standards of probation supervision provided by probation departments based on validated risk assessments of offenders.
- C. *Supervision of Offenders Released from DOC* – It requires DOC to: (1) supervise parolees who were sentenced by a court in Indiana for murder, a Class A felony, a sex offense, or incest; (2) assist all parolees sentenced by a court in Indiana; and (3) supervise and assist out-of-state parolees accepted under an interstate compact as required by the interstate compact. It provides that when a court imposes a sentence on a specified type of offender, the court shall suspend part of the sentence and require the offender to serve the suspended period on probation, in a community corrections program, or in a problem solving court program.
- D. *New State Funds to Reduce Felony Commitments* – Probation Improvement Fund: It establishes the Probation Improvement Fund administered by DOC to award grants based on a recommendation by

the Judicial Conference of Indiana to: (1) county probation departments that supervise persons convicted of a felony to promote the adoption of certain best practices to improve probation administration and services and reduce probation revocations; and (2) counties that supervise persons who have been convicted of a felony to consolidate and improve the efficiency of probation administration and services and community corrections programs contingent on the ability of a county probation department to demonstrate a minimal level of coordination with other offender supervision agencies operating in the same county, including community corrections programs, parole authorities, and other probation agencies. Substance Abuse Treatment Fund – It establishes the Substance Abuse Treatment Fund administered by DOC to award grants to probation departments to increase substance abuse treatment access for persons on probation who have substance abuse addictions.

- E. *Community Corrections Programs* – It requires local and state community corrections programs to use services, programs, and practices that reduce recidivism rates, as demonstrated by scientific research, among persons who participate in community corrections programs. It requires community corrections boards to coordinate or operate educational, mental health, drug or alcohol abuse counseling, housing, and supervision services for persons participating in community corrections programs. It provides that money received by a community corrections program or community transition program from the state may be used only to provide community corrections or community transition services for persons who have been convicted of a felony. It provides that any user fees collected: (1) by a community corrections program that is funded in whole or in part by money received from the state; and (2) from persons who have been convicted of a felony; may be used only to provide services for persons who have been convicted of a felony. It provides that if the DOC establishes or contracts for the establishment of a community corrections program, the program may provide services only for persons who have been convicted of a felony.
- F. *Home Detention User Fees* – It provides that any home detention user fees collected: (1) by a community corrections program that provides supervision of home detention and is funded in whole or in part by money received from the state; and (2) from persons who have been convicted of a felony; may be used only to provide home detention services for persons who have been convicted of a felony.
- G. *Sentence Suspension of Class D Felonies* – It removes certain Class D felonies from the list of felonies for which a court may suspend only the part of the sentence that exceeds the minimum sentence. It repeals the statute prohibiting the suspension of certain felony sentences if the person has a juvenile record. It removes certain habitual traffic violator statutes from the list of crimes that are not suspendible.
- H. *Crimes of Theft* – It defines "defraud" for purposes of criminal law. It makes theft: (1) a Class A misdemeanor if the amount of property involved in the theft is less than \$750; (2) a Class D felony if the amount is between \$750 and \$50,000 or if the person has a prior conviction; and (3) a Class C felony if the amount of property is at least \$50,000. It removes provisions relating to receiving stolen property. It makes forgery a Class D felony. It consolidates certain duplicative provisions and makes enhancements to certain crimes more uniform.
- I. *Criminal Code Evaluation Commission* – It requires the Criminal Code Evaluation Commission to study truth in sentencing, good time credit and earned credit time, and felony classifications during the 2011 interim.

- J. *Drug Crimes* – It specifies that a person who possesses: (1) up to 10 grams of cocaine or methamphetamine commits a Class D felony; (2) from 10 to 28 grams of cocaine or methamphetamine commits a Class C felony; and (3) more than 28 grams of cocaine or methamphetamine commits a Class B felony. It provides that a person who manufactures or deals: (1) up to 10 grams of cocaine, methamphetamine, or a Schedule I-III controlled substance (or up to 24 pills of a Schedule I-III controlled substance in pill form) commits a Class C felony; (2) from 10 to 28 grams of cocaine, methamphetamine, or a Schedule I-III controlled substance (or from 24 to 72 pills of a Schedule I-III controlled substance in pill form) commits a Class B felony; and (3) more than 28 grams of cocaine, methamphetamine, or a Schedule I-III controlled substance (or more than 72 pills of a Schedule I-III controlled substance in pill form) commits a Class A felony. It provides additional sentence enhancements if the person possesses or deals the cocaine, methamphetamine, or Schedule I-III controlled substance: (1) on a school bus; (2) near a school, park, public housing facility, or youth program center; (3) to certain minors; or (4) while also possessing a firearm.
- K. It makes an appropriation.
- L. *Changes in Definitions* – It repeals auto theft (same offense as theft) and terroristic deception (consolidated in other provisions).

(The introduced version of this bill was prepared by the Criminal Code Evaluation Commission.)

**Effective Date:** July 1, 2011.

**Explanation of State Expenditures:** The bill should result in potential savings to the Department of Correction by reducing number of offenders committed to DOC and reducing their lengths of stay. Savings will be used to expand cognitive therapy programs for offenders committed to DOC and to fund three community-based programs to improve probation, community corrections, and other community-based supervision of felons and misdemeanants. No appropriations are in the current bill, so a total net effect for the state General Fund cannot be determined.

DOC currently projects that the number of offenders that will be in DOC facilities over the next five to ten years will require the state to acquire land and build new facilities. The following table compares the number of offenders that DOC is likely to be housing between 2012 and 2017 under two scenarios: (1) if no changes are made to current sentencing statutes and (2) if changes are made to the sentencing statutes as specified in the bill.

<u>FY</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Prison Population With No Changes	30,669	31,453	32,257	33,081	33,927	34,794
Projected Population Based on Changes*	28,489	28,344	28,539	28,742	28,956	29,174
Difference	2,180	3,109	3,718	4,339	4,971	5,620
Savings to DOC (\$M) *	\$5.68	\$8.10	\$9.69	\$11.30	\$12.95	\$14.64
- Probation Improvement	No Specific Appropriation in the Bill					
- Community-Based Substance						
- Class D Admission Incentive						
Net Savings for DOC	Net Savings to DOC will depend on appropriations					
* Population changes are explained in later portions of this fiscal note.						
**Cost savings are shown in millions based on an annual marginal cost savings of \$2,605 per offender.						

The following table and narrative describes the effect that the various provisions could have on the prison population.

	<b>Bed Reduction by Fiscal Year</b>					
	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>2016</b>	<b>2017</b>
Expand Cognitive Behavioral Therapy/ Allowing for More Time Cuts	897	996	996	996	996	996
Divert Felony D offenders	325	325	325	325	325	325
Suspendible Felony D	72	145	145	145	145	145
Reduce Probation Revocations	305	457	457	457	457	457
Graduate Theft	218	218	218	218	218	218
Class C Forgery to Class D	319	319	319	319	319	319
Class C Auto Theft to Class D	44	44	44	44	44	44
Graduate Drug Sales	0	605	1,210	1,210	1,210	1,210
<b>Total Beds</b>	<b>2,180</b>	<b>3,109</b>	<b>3,714</b>	<b>3,714</b>	<b>3,714</b>	<b>3,714</b>

*Marginal Cost and Incentive and Disincentive Program for Class D Felony Offenders and Expand Cognitive Behavioral Therapy To Allow More Early Releases Through Credit Time* – DOC would determine an average daily marginal cost to house one new offender without building additional beds. DOC uses a portion of medical costs, meals, and uniforms to estimate \$8.92 per day, or \$3,256 a year. This marginal cost estimate is used to determine certain savings that can be reinvested into three new funding programs described below.

Estimated Marginal Daily Cost for Incarcerating One New Offender in 2011					
Medical*		Food		Uniforms	Total
\$1,617	+	\$1,274	+	\$365	= \$3,256
*Medical cost contracts allow for 2% annual growth					
How Marginal Savings will be used					
20%	X	\$3,256	=	\$651	Cognitive Therapy Expansion
50%	X	\$3,256	=	\$1,628	Class D Diversion
50% of marginal savings for Class D diversion is in proposed legislation					

*Expanding Cognitive Behavioral Therapy* – DOC anticipates saving between 900 and 1,000 beds annually. Based on any anticipated future savings from fewer commitments, DOC anticipates using 20% of the marginal cost savings (\$651 in 2011) for expanding the number of offenders who could participate in cognitive therapy programs and consequently become eligible for a time cut of up to six months on their time in prison. The expansion of the cognitive therapy component does not need legislative changes since IC 35-50-6-3.3 permits a maximum six-month time cut for offenders who complete a reformatory program.

*Class D Diversion Program* – DOC is required by this bill to establish baseline averages for each county based on county commitments to DOC between CY 2007 and 2010. These baselines would not include Class D offenders who were originally sentenced to probation and whose probation had been revoked. In future years, counties committing fewer offenders than the four-year baseline average would receive 50% of the marginal cost (\$1,628 in 2011) to be distributed to the county council. The county council would then redistribute this money to community supervision programs in that county. DOC anticipates that, at a minimum, 10% of new commitments would be placed on community supervision instead of being committed to DOC. The number of beds DOC would save is based on a six-month length of stay.

6,491 Felony D admissions for New commitments in 2009	
10% of 6,491	649
Average Length Of Stay	6 months
Bed Savings (annually) =	325

If Class D felony commitments exceed the 2007-to-2010 baseline average, then this same amount would be subtracted from the County Misdemeanor Fund (IC 11-12-6-2), a funding source used to help pay for housing misdemeanors in county jails.

*New State Funds to Reduce Felony Commitments* – Besides the Class D diversion program, two new funds are created to help reduce commitments to DOC: a Probation Improvement Fund and a Substance Abuse Treatment Fund. While no appropriations are in the bill for either of these state funds, as an illustration, consultants with the Council of State Governments use \$3.25 M in 2012 and \$4.75 M in each subsequent year as the amount needed in all three programs to divert more Class D felons to community supervision and to reduce future DOC commitments.

*Supervision of Offenders Released from DOC* – Under current sentencing statutes, a court with criminal jurisdiction gives a criminal defendant found guilty of a felony a sentence. Whether the offender is released

on probation or parole depends on whether the judge makes the offender serve the entire sentence in DOC.

- The offender will be released on parole if the court requires the convicted defendant to serve the full sentence in DOC. While in DOC custody, the offender could be permitted to receive time cuts through good conduct and by participating in education, substance abuse, and rehabilitative programs. With time cuts, the offender can be released from DOC at an earlier time than originally sentenced. Once the offender is released, the offender will be on parole for either one year, two years, ten years, or lifetime depending on the felony for which the offender was convicted.
- Offenders who receive no time while in prison will not be on any community supervision.
- The offender will be released on probation if the court suspends a portion of the sentence and requires the convicted person to serve this suspended portion of the sentence in community supervision after serving the initial portion in DOC.

Effective July 1, 2011, this bill will put offenders in one of two different supervision plans upon release. Those who were committed to DOC for murder, any Class A felony, any sex crime, or incest will be supervised by parole officers when released from prison. And for all other Class B, C, and D felons, courts will suspend six months to three years of their sentences so that when these offenders are released, they will be under community supervision for a period of time. Offenders violating the conditions of supervision can be ordered by the court to return to DOC to serve the remaining time there.

LSA uses the number of offenders committed in CY 2009, the most recent year available, to illustrate how this bill might affect the number of offenders that would be on parole and the number under community supervision. Under current law, offenders released from DOC can be released to probation and other community supervision programs, community transition programs (CTP), parole, out-of-state parole, or discharged with no supervision. As proposed, this bill would require offenders, who are released from DOC to be placed on parole if they were committed for murder, any Class A felony, or any sex crime or incest. All other Class B, C, and D felons would be placed on either probation, community correction, or problem-solving courts.

Based on their earliest possible release date, whether these offenders had any type of suspended sentence and the proposed changes in release assignments under this bill, the following shows how the parole population could change.

Estimated Effect of Change in Parole Caseload Based on DOC Commitments in CY 2009									
	Year of Release Based on 2009 Commitments								
	2009	2010	2011	2012	2013	2014	2015	2016	2017
No Change in Parole	72	150	79	41	34	21	11	16	16
<b>From Parole to Probation</b>	<b>(3,677)</b>	<b>(3,712)</b>	<b>(1,135)</b>	<b>(454)</b>	<b>(300)</b>	<b>(214)</b>	<b>(90)</b>	<b>(61)</b>	<b>(39)</b>
From Probation to Parole	69	123	73	41	36	25	20	14	10
<b>Net Change in Offenders on Parole</b>	<b>(3,608)</b>	<b>(3,589)</b>	<b>(1,062)</b>	<b>(413)</b>	<b>(264)</b>	<b>(189)</b>	<b>(70)</b>	<b>(47)</b>	<b>(29)</b>

*Nonsuspendible Sentences* – Current law does not permit sentencing courts to suspend the sentences of defendants in adult court who have juvenile records for certain serious crimes that were committed within

a three-year period. In addition, Class D offenders with a prior unrelated felony committed within the previous three years cannot have their full sentence suspended, and consequently placed on community supervision. This bill would remove both of these prohibitions and permit the court to place offenders with prior felony convictions in community supervision instead. DOC estimates that roughly 8% of these offenders would be diverted to community supervision saving 145 beds annually.

Beds Saved through Removal of Nonsuspendible Sentences								
Class D Commitments		Percent Diverted		Offenders Diverted		Adjusted for 6-Month Length of Stay		Estimated Beds Saved
3,620	x	8%	=	290	x	50%	=	145

*Crimes of Theft* – Several categories of theft are restructured. Under the general category of theft, the following changes are proposed.

Proposed Changes in Economic Loss in Theft		
	Current Law	Proposed
Class A Misdemeanor	none	\$750 or less
Class D felony	\$100,000 or less	between \$750 and \$50,000
Class C felony	\$100,000 or more	\$50,000 or more

DOC estimates that 20% of all felony thefts will be for less than \$750, reducing beds needed by 218 per year.

Both auto theft and forgery are Class C felonies and would be made Class D felonies.

For auto theft, DOC anticipates 44 fewer beds needed, as 99 Class C felons would serve 324 days less if they were sentenced as Class D felons.

For forgery, DOC estimates that 319 beds will be saved with this change since 891 Class C felons would be released 262 days sooner if they were Class D felons.

Proposed changes to insurance fraud, check deception, welfare fraud, Medicaid fraud, Insurance fraud, bank fraud, and check fraud offenses will affect certain thresholds of economic loss so that more offenders would be sentenced as D rather than C felons. LSA anticipates that any savings in beds are expected to be minimal. In CY 2009, about 45 offenders were committed to DOC for all of these offenses combined.

*Changes in Drug Laws* – The following tables show the changes proposed for drug laws. DOC anticipates saving 1,200 beds per year as a number of Class A offenders are resentenced as either Class B or C felons.

<b>Dealing</b>		
<b>Felony</b>	<b>Current Law</b>	<b>Proposed</b>
C	None	Less than 10 grams
B	Less than 3 grams	Between 10 and 28 grams; or less than 10 grams delivered in specified sites; or while possessing a firearm
A	More than 3 grams; or less than 3 grams and delivered to juvenile; or within 1,000 feet of specified sites*	More than 28 grams; or more than 10 grams and within 200 feet of specified sites
* Note – Specified sites include school properties, public parks, family housing complexes, or youth program centers.		

<b>Possession</b>		
<b>Felony</b>	<b>Current Law</b>	<b>Proposed</b>
D	Less than 3 grams	Less than 10 grams
C	More than 3 grams less than 3 grams with firearm	Between 10 and 28 grams; or possessed drug of less than 10 grams within 200 feet from specified sites* or while possessing firearm
B	Less than 3 grams and within 1,000 feet of specified sites*	More than 28 grams; or possessed more than 10 grams within 200 feet of specified sites* or while possessing firearm
A	More than 3 grams and within 1,000 feet of specified sites*	None
* Note – Specified sites include school properties, public parks, family housing complexes, or youth program centers.		

<b>Manufacturing Cocaine and Other Drugs</b>		
<b>Felony</b>	<b>Current Law</b>	<b>Proposed</b>
B	Manufacturing less than 3 grams	Manufacturing less than 10 grams less than 10 grams delivered to: juvenile; in area less than 200 feet from specified sites; and possessing firearm
A	More than 3 grams or less than 3 grams within 1,000 feet of specified sites	Manufacturing more than 10 grams or less than 10 grams in area less than 200 feet of specified sites
* Note – Specified sites include school properties, public parks, family housing complexes, or youth program centers.		



Manufacturing Methamphetamine		
Felony	Current Law	Proposed
B	Manufacturing less than 3 grams	Manufacturing less than 10 grams
A	More than 3 grams or less than 3 grams within 1,000 feet of specified sites	Manufacturing more than 10 grams or less than 10 grams in area within 1,000 feet of specified sites
* Note – Specified sites include school properties; public parks; family housing complexes; or youth program centers		

### **Explanation of State Revenues:**

**Explanation of Local Expenditures:** More offenders will be committed to community supervision programs, including probation, community corrections programs, and problem-solving courts as a result of this bill. The increase in offenders will result as more offenders are sentenced to community supervision programs instead of being incarcerated and because more offenders will be released to community supervision rather than to parole. In addition, some counties will have to process probation violations at a faster rate rather than allowing probationers who violate their court orders to remain in jail for longer than 15 days.

*Level of Supervision Required by Risk Level* – This bill gives explicit standards for supervising offenders who are released on probation.

Risk Level/Crime	Type of Supervision	Duration
High	Active	All Times
Low or Medium Misdemeanant	Active	First 9 Months
	Administrative	Remaining Time on Probation
Low or Medium Felon	Active	First 12 Months
	Administrative	Remaining Time on Probation

*More Class D Felons Diverted to Community Supervision* – Diverting more offenders to probation and allowing more Class D offenders with prior felons to have their sentences suspended is likely to increase the number of new offenders in community supervision. DOC and the Council of State Government consultants anticipate almost 900 new offenders will be on probation. Depending on their criminal background and other risk factors, local programs may need more probation officers to supervise these offenders. In general, Class D offenders are likely to be on active supervision for six to twelve months.

New Offenders Diverted to Probation Due to Proposed Changes						
	2012	2013	2014	2015	2016	2017
Theft (20% of reclassified as misdemeanants)	428	428	428	428	428	428
Divert Felony D offenders	325	325	325	325	325	325
Suspendible Felony D	72	145	145	145	145	145
New Offenders	825	898	898	898	898	898

*Supervision of Offenders Released from DOC* – (See also *Explanation of State Expenditures*.) Beginning July 1, 2011, offenders who have been sentenced for Class B, C, or D felonies that are not sex crimes or incest will have a suspended sentence. As a result, these offenders will all have a period of time ranging between six months and three years where they will be on community supervision after release from prison. Offenders who are currently in DOC who are in this category and do not have a suspended sentence will be released on parole and be supervised by DOC parole officers. Over time, though, the number of offenders who will be on probation could increase significantly.

LSA used 2009 commitments to simulate the potential effect that this bill might have on counties. LSA assumed that if an offender had any suspended time off their sentence, then they would be released on probation. LSA estimates that 3,677 more offenders will be released on probation in the first year under this proposal. The additional offenders released on probation in the first two years will be almost all Class D felons. Depending on the risk levels and need for active supervision, probation departments may need more probation officers. The ultimate impact on each county will depend on each offender's risk level and crime. Some of the added costs would likely be recovered from user fees paid by the offenders on probation.

<b>Estimated Effect of Change in Community Supervision Caseload Based on DOC Commitments in CY 2009</b>										
		2009	2010	2011	2012	2013	2014	2015	2016	2017
<b>Current Law</b>	<b>No Change in Probation</b>	<b>1,917</b>	<b>1,406</b>	<b>538</b>	<b>400</b>	<b>176</b>	<b>112</b>	<b>51</b>	<b>35</b>	<b>13</b>
<b>Proposed</b>	From Parole to Probation	3,677	3,712	1,135	454	300	214	90	61	39
	From Probation to Parole	69	123	73	41	36	25	20	14	10
	<b>Net Effect on Probation</b>	<b>3,608</b>	<b>4,995</b>	<b>1,600</b>	<b>813</b>	<b>440</b>	<b>301</b>	<b>121</b>	<b>82</b>	<b>42</b>
<b>Net Effect</b>	<b>Offenders Released</b>	<b>5,525</b>	<b>6,401</b>	<b>2,138</b>	<b>1,213</b>	<b>616</b>	<b>413</b>	<b>172</b>	<b>117</b>	<b>55</b>

(This portion of the fiscal note may be updated as more release data from DOC becomes available.)

*Probation Revocation* – This bill limits the amount of time that an offender who has been placed on probation and has probation revoked due to a new crime or technical violation may remain in jail without bond is 15 days. During 2009, 9,967 felony offenders who were on probation had their probation revoked because they were determined to have committed a new offense or committed a violation.

Depending on current jail conditions and court workload, this provision could increase the workload of certain courts.

### **Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction; Indiana Judicial Center.

**Local Agencies Affected:** County sheriffs.

**Information Sources:** Department of Correction; *Justice Reinvestment in Indiana: Summary Report and Policy Framework*, December 2010.

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